



Amendments to Rules Concerning References to Code of Federal Regulations (CFR)

LSA Document #07-373

Overview

Amends 326 IAC 1-1-3 to update “References to the Code of Federal Regulations (CFR)” to mean the 2007 edition.

Citations Affected

Amends: 326 IAC 1-1-3.

Affected Persons

All stakeholders will benefit from this rulemaking since state standards that are incorporated by reference will be consistent with federal standards.

Reasons for the Rule

The purpose of the state rulemaking is to update state rules for consistency with federal rules.

Economic Impact of the Rule

Updating “References to Code of Federal Regulations” to mean the July 1, 2007 edition will have a positive effect on business, local governments, and citizens by ensuring that state and federal rules are consistent. Although there may be costs to comply with the rules that have been incorporated by reference, the costs are due to the federal regulations themselves and no additional costs will be incurred as a result of updating the reference to the CFR.

Benefits of the Rule

By annually updating the “Reference to the Code of Federal Regulations” federal requirements that have been incorporated by reference into state rules are revised if they have been revised in a federal rulemaking action.

Description of the Rulemaking Project

326 IAC 1-1-3, Reference to the Code of Federal Regulations (CFR), indicates the yearly edition of the CFR that is applicable to rules that have been incorporated by reference throughout Title 326 of the Indiana Administrative Code (IAC), unless a different edition is specified in a given rule. By annually updating the reference CFR, IDEM is able to incorporate by reference the latest version of the

parts of the CFR already incorporated into the air rules, with the exception of those most recently published in the Federal Register (FR).

The 2007 edition of the CFR is a codification of the general and permanent rules published in the FR as of June 30, 2007. IDEM incorporates citations by reference from Titles 29 and 40 of the CFR.

Title 29 of the CFR, entitled “Intergovernmental Review of Environmental Protection Agency Programs and Activities” contains federal rules for the asbestos and lead programs. Title 29 of the CFR is referenced in 326 IAC 14 (Emission Standards for Hazardous Air Pollutants), 326 IAC 20 (Asbestos Management), and 326 IAC 23 (Lead-Based Paint Program). Many of these regulations are either directly incorporated by reference into Title 326 of the IAC as state-enforceable rule provisions or they are incorporated into Title 326 of the IAC as federal authority for implementation and enforcement of state rule provisions.

Title 40 of the CFR entitled “Protection of the Environment,” includes all federal environmental regulations promulgated by the U.S. Environmental Protection Agency (U.S. EPA). It is referenced throughout Title 326 of the IAC.

The latest version of the CFR adopted by the Air Pollution Control Board is dated July 1, 2006. The following is a non-exhaustive list of examples of rules and changes that occurred between July 1, 2006 and June 30, 2007, that will be automatically updated with the update of the definition; “Reference to the Code of Federal Regulations”:

- **71 FR 38482, 7/6/2006--Final Rule--Standards of Performance for Stationary Combustion Turbines:** On July 6, 2006, the U.S. EPA promulgated standards of performance for new stationary combustion turbines in 40 CFR part 60, subpart KKKK. The new source performance standards (NSPS) recognize changes in nitrogen oxides (NO_x) emission control technologies and turbine design since the original promulgation of standards in 1979. Turbine owners and operators may now meet either concentration-based or output-based standards. *Citation Affected:* 12-1-1

71 FR 39579, 7/13/2006–Final Rule–National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities:

The NESHAP for integrated iron and steel manufacturing facilities (40 CFR Part 63, Subpart FFFFF) was challenged by industry petitioners after promulgation. The U.S. EPA and petitioners entered into a settlement agreement from which these final amendments to the NESHAP resolve the petitioner's concerns. This action includes amendments that: add a new compliance option; revise emission limitations; reduce the frequency of repeat performance tests for certain emission units; add corrective action requirements; and clarify monitoring, recordkeeping, and reporting requirements. *Citation Affected:* 326 IAC 20-93-1

• **71 FR 40316, 7/14/2006–Final Rule–National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing:** This action amends the NESHAP for miscellaneous organic chemical (MON) manufacturing (40 CFR Part 63, Subpart FFFF) and corrects inconsistencies that were discovered during the U.S. EPA's review process. Specifically, the rule clarifies the applicability of 40 CFR 63, Subpart FFFF, provides additional compliance options, modifies initial and continuous compliance requirements, and simplifies recordkeeping and reporting requirements. These provisions will reduce the burden associated with demonstrating compliance without affecting emissions control or the ability of enforcement agencies to ensure compliance. *Citation affected:* 326 IAC 20-84-1

• **71 FR 55119, 9/21/2006–Final Rule–Methods of Measurement for Visible Emissions:** This action finalizes Methods 203A, 203B, and 203C for determining visible emissions using data reduction procedures that are more appropriate for State Implementation Plan (SIP) rules than Method 9, the method that was previously being used. The States requested this action and the intended effect is to provide States with an expanded array of data reduction procedures for determining compliance with SIP opacity regulations. The action also amends various testing provision in the New Source Performance Standards (NSPS) to correct errors and amend a testing provision. *Citation Affected:* 326 IAC 12-1-1

• **71 FR 58499, 10/4/2006–Final Rule–NESHAP: Miscellaneous Coating Manufacturing:** U.S. EPA amended the NESHAP for miscellaneous coating manufacturing (40 CFR Part 63, Subpart HHHHH) to clarify the definition of coating manufacturing. The amendments also clarify the

applicability of the rule and minimize the compliance burden. *Citation Affected:* 326 IAC 20-88-1

• **71 FR 69011, 11/29/2006–Final Rule–NESHAP: Site Remediation:** U.S. EPA amended the NESHAP for site remediation activities (40 CFR Part 63, subpart GGGGG). The rule revises the specific provisions in the rule to resolve issues and questions subsequent to promulgation; correct technical omissions; and correct typographical, cross-reference, and grammatical errors. *Citation Affected:* 326 IAC 20-87-1

• **72 FR 20227, 4/24/2007–Direct Final Rule--NESHAP: Surface Coating of Automobiles and Light-Duty Trucks; NESHAP for Surface Coating of Plastic Parts and Products:** This rulemaking clarifies the interaction between the Automobiles and Light-Duty Trucks NESHAP (40 CFR Part 63, Subpart IIII) and the NESHAP for Surface Coating of Plastic Parts and Products (40 CFR Part 63, Subpart PPPP). This action also corrects certain errors in the regulatory text. The U.S. EPA is also taking direct final action on amendments to the Plastic Parts NESHAP to clarify that screen printing is not subject to that rule. *Citations Affected:* 326 IAC 20-81-1 and 326 IAC 20-85-1

Scheduled Hearings

First Public Hearing: October 3, 2007 at 1:00 pm at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as appropriate.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The rules are consistent with federal rules.

Rulemaking Process

The first step in the rulemaking process is publication of one of three types of notices in the *Indiana Register*. The first type of notice is a first notice of comment period. The first notice of comment period includes a discussion of issues and opens a first comment period. A second notice is then published which contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The second type of notice is a section 7 notice. A section 7 notice contains a determination by the commissioner under IC 13-14-9-7 that only one comment period is required. It contains the commissioner's determination and findings, the draft rule, a request for written comments and a notice of first meeting/hearing. The third type of notice is a section 8 notice. A section 8 notice under IC 13-14-9-8 contains the commissioner's determination and findings, the draft rule, a notice of a 30 day comment period and a notice of a public hearing. In the case of a regular rulemaking or a rulemaking initiated with a section 7 notice the Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. In the case of a rulemaking initiated with a section 8 notice, the Air Pollution Control Board holds a hearing/meeting on the draft rule and public comments are heard prior to consideration for adoption. Following final adoption or adoption, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Publisher. This rulemaking was initiated with a section 8 notice.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Amy Fardy, Rule Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).